

NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION
FOR
INVESTMENT BANKERS

AS APPROVED ON FEBRUARY 18, 1935



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Approved Code No. 141—Amendment No. 3

AMENDMENT TO CODE OF FAIR COMPETITION
FOR
INVESTMENT BANKERS

As Approved on February 18, 1935

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ORDER

APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR INVESTMENT BANKERS

Applications having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of amendments of Amendment No. 2 of the Code of Fair Competition for Investment Bankers, which are attached hereto and hereby made a part hereof, and Notice of Opportunity to be Heard having been afforded to all interested parties, and any objections filed having been duly considered and the annexed report on said amendments, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859 dated September 27, 1934, and otherwise; does hereby incorporate, by reference, said annexed report and does find that said amendments and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that said amendments, which are attached hereto and made a part hereof, be and they are hereby approved, and that the previous approvals of said Code and said Amendment No. 2 are hereby modified to include an approval of said Code in its entirety as amended.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By L. C. MARSHALL, *Executive Secretary.*

Approval recommended:

L. H. PEEBLES,

Division Administrator.

WASHINGTON, D. C.,

February 18, 1935.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: An application has been duly made pursuant to and in full compliance with the provisions of the National Industrial Recovery Act for the amendment of Amendment No. 2 of the Code of Fair Competition for Investment Bankers for the following purposes:

1. To clarify the definitions "interim certificate" and "interim receipt" in paragraph (t) of Article II.

2. To modify subsection (d) of Section 1 of Article IV regarding the acceptance of stock dividends in excess of the amount charged earnings or earned surplus by a company paying a stock dividend.

3. To clarify Section 2 of Article V with respect to three-day notice of organization of selling syndicate or selling group.

4. The addition of a new Section 14 to Article X to provide for automatic suspension and cancellation of registration in cases of nonpayment of code assessments.

5. The addition of a new Section 15 to Article X to provide for automatic suspension and cancellation of registration for failure to supply necessary reports on which code assessments are predicated.

6. The addition of a new Section 16 to Article X to provide for reregistration in cases of cancellation as provided in Sections 14 and 15 of Article X.

The Code of Fair Competition for Investment Bankers was approved on November 27, 1933. Amendment No. 2 of this Code contains all of the Fair Trade Practice provisions and was approved on March 23, 1934.

The proposed amendment clarifying paragraph (t) of Article II with reference to definition of the terms "interim certificate" and "interim receipt" is advisable in order to avoid the possibility that a temporary security which gives the holder all the legal rights might be considered either an interim certificate or interim receipt, as in that case under Article IV, Section 3 of the Code the required refund of monies paid for a security would be unjustified since the purpose of Article IV, Section 3 in requiring refunds of monies paid is to protect the holders of interim certificates or interim receipts in the event that the security purchased cannot for any unforeseen reason be delivered. In contrast with such temporary security interim certificates and interim receipts do not give the holder the legal rights he would possess if the security were in permanent form.

It is proposed to modify subsection (d) of Section 1 of Article IV so as to permit an organization which receives regularly recurring stock dividends from a company neither controlled by nor affiliated with it to promptly sell such stock dividends and take up the proceeds

as income regardless of whether or not the proceeds are more or less than the proportionate amount charged against earnings or earned surplus by the issuing company. The section as written prohibits taking up as income stock dividends received at an amount greater than that charged against earnings or earned surplus by a company paying such stock dividends and this is in accordance with sound business practice when applied to corporations in general, such as operating corporations. This principle is not applicable, however, with respect to organizations defined in the proposed amendment, such as investment trusts.

The clarification of Section 2 of Article V is necessary because of uncertainty among investment bankers as to its exact intentions. The proposed amendment accomplishes the following two purposes, which I am advised was the intention of the provision now in the Code:

1. It provides a three-day period during which an investment banker may come to a decision as to whether or not he wishes to participate in the distribution of the issue of securities as well as the amount of his participation, and

2. It provides a three-day period during which the investor may come to a decision as to whether or not his order for a portion of the issue is a firm order since the order cannot become a firm order in accordance with the Code until written confirmation from the seller, which confirmation may not be given by the seller within the three-day period.

Under the existing Code the Code Committee has authority to cancel the registration of any registered investment banker in cases of non-payment of code assessments, but may do so only after formal procedure entailing unnecessary expenses. The proposed amendment adding Section 14 to Article X provides ample time for the payment of an assessment by a registered investment banker before any action occurs since he has thirty days after the notice of indebtedness has been sent to him to pay such assessment and if the assessment is not received within that time a second notice is mailed to him with which second notice it is required that a copy of this amended section be included. A period of fifteen days after the second notice is provided, after which time the investment banker is automatically suspended and if payment is not received within another fifteen day period after suspension, his registration is automatically cancelled. Provision is made, however, that the Investment Bankers Code Committee may stay the operation of automatic cancellation in any case in which it finds that undue or unreasonable hardship will result by reason of the requirement that the assessment be paid within the period prescribed. Necessary discretion is thus insured to the Code Committee in cases which warrant special consideration.

The above remarks with reference to the proposed Section 14 are likewise applicable to the proposed amendment to add a new Section 15 to Article X involving the submission of reports upon which are predicated the code assessments, except that there is, of course, no necessity for discretion with respect to automatic cancellation in this case since there would appear to be no valid excuse why any investment banker could not forward a report as to the number of his employees. The plan of assessment is based on the number of em-

ployees of a registered investment banker, and therefore, is the controlling factor in assessments for code expenses.

The proposed amendment adding Section 16 to Article X provides that an investment banker whose registration has been cancelled in accordance with the new Section 14 may again become a registered investment banker upon application, provided payment has been made in full of the amount of the indebtedness for which the original registration was cancelled. It further provides that if an investment banker's registration has been cancelled in accordance with the new Section 15 for failure to send in the reports required by the Code the investment banker may again become a registered investment banker upon application if the required reports are submitted. This section further provides that an investment banker who has assented to the Code is entitled to new registration only if he pays in full the amount of any unpaid assessment owing by him in his capacity as an assentor.

FINDINGS

The Deputy Administrator in his report to the National Industrial Recovery Board on said amendments of said Amendment No. 2 of said Code having found as herein set forth and on the basis of all of the proceedings in this matter:

It finds that:

(a) The amendments of said Code and the Code as amended are well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act including the removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanction and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The Code as amended complies in all respects with the pertinent provisions of said Title of said Act, including without limitation subsection (a) of Section 3, subsection (a) of Section 7, and subsection (b) of Section 10 thereof.

(c) The Code empowers the Code Committee to present the aforesaid amendments on behalf of the Industry as a whole.

(d) The amendments and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(e) The amendments and the Code as amended are not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said amendments.

For these reasons, therefore, these amendments have been approved.

For the National Industrial Recovery Board:

L. C. MARSHALL,
Executive Secretary.

FEBRUARY 18, 1935.

AMENDMENT TO CODE OF FAIR COMPETITION FOR INVESTMENT BANKERS

Amend Paragraph (t) of Article II of Amendment No. 2 of the Code of Fair Competition for Investment Bankers:

Strike out the first period and insert in lieu thereof a semicolon and the following:

but the term "interim certificate" or "interim receipt" shall not include any security in temporary form which entitles the holder thereof to the possession of the same legal rights in respect of such security as would be possessed by the holder of the security in permanent form.

Amend Article IV, Section 1, Sub-Section (d) of Amendment No. 2 of the Code of Fair Competition for Investment Bankers: Add the following to the present Sub-Section:

Where a corporation (or a voluntary association) receives regularly recurring stock dividends from a company not directly or indirectly controlled by it or affiliated with it and promptly sells such stock dividends, such recipient may take up as income the cash proceeds from the sale of such stock dividends, provided the amount thereof is segregated from other income in such recipient's published reports and a statement of the basis upon which the credit is computed is given.

Amend Article V, Section 2 of Amendment No. 2 of the Code of Fair Competition for Investment Bankers:

Strike out all of the existing Section and in lieu thereof insert the following:

SECTION 2. Three-day Notice of Organization of Selling Syndicate or Selling Group.—Any investment banker proposing to organize a selling syndicate or a selling group to distribute new securities other than those of the United States Government or any instrumentality thereof or of any State or subdivision or instrumentality thereof shall mail or deliver or telegraph a copy of the prospectus or an adequate description of the security to each investment banker who is to be offered a participation in such syndicate or a membership in such selling group at such time that, in the usual course of delivery, such prospectus or description will be received by all such investment bankers on approximately the same day and at least three days (excluding Sundays and holidays but including the day of delivery) before the date fixed by the manager when participants in such syndicate or members in such group must accept or refuse such participation or membership and such manager shall, either at the time of the mailing or delivery or telegraphing of such prospectus or description as aforesaid or at another time, fix a date for the public offering of such securities which offering date shall be a date not earlier than the date fixed by such manager when participants in such syndicate or members in such group must accept or refuse such participation or membership.

After the receipt of the prospectus or description any investment banker who is to be offered a participation in a selling syndicate or a membership in a selling group may advise prospective purchasers in regard to the security, but no such investment banker shall confirm an order for such securities before the day fixed by the manager for the public offering or before he shall have accepted in whole or in part the participation or membership offered to him.

Amend Article X of Amendment No. 2 of the Code of Fair Competition for Investment Bankers:

Add the following new Section to be numbered Section 14:

SECTION 14. *Payment of Assessment.*—Any registered investment banker who shall, upon the date when this amended Section becomes effective, have failed to pay any assessment levied against him pursuant to the provisions of Section 13 of this Article X, within 30 days after notice of his indebtedness shall have been sent him, or any registered investment banker who shall, at any time after this amended Section becomes effective, fail to pay any assessment levied against him pursuant to the provisions of Section 13 of this Article X, within 30 days after notice of his indebtedness shall have been sent him, shall immediately be sent by registered mail a second notice in writing of his indebtedness, and if said indebtedness be not liquidated within 15 days after the date of the mailing of such second notice, the registration of such delinquent registered investment banker is thereby automatically suspended; provided that a copy of this amended Section shall have been sent to such delinquent registered investment banker with such second notice. Any registered investment banker whose registration shall have been suspended as provided in this amended Section shall be immediately notified in writing of the suspension of his registration, and his registration may be automatically reinstated after payment of his indebtedness; provided such payment shall be made within 15 days after such registration has been so suspended. If any delinquent registered investment banker shall fail to pay his indebtedness after 15 days suspension his registration shall be automatically canceled; provided, however, that the Investment Bankers Code Committee may stay the operation of the automatic cancellation provided for herein, in any case in which it finds that undue or unreasonable hardship will result to a registered investment banker by reason of the payment by him of his assessment within the period prescribed.

Amend Article X of Amendment No. 2 of the Code of Fair Competition for Investment Bankers:

Add the following new Section to be numbered Section 15:

SECTION 15. *Filing of Reports for Assessments.*—Any registered investment banker who shall, upon the date when this amended Section becomes effective, have failed to file with the Investment Bankers Code Committee any report within 30 days after notice shall have been sent him that such report is required for the purpose of any assessment to be levied pursuant to the provisions of Section 13 of this Article X, or any registered investment banker who shall, at any time after this amended Section becomes effective, fail to file with the Investment Bankers Code Committee any report within 30 days after notice shall have been sent him that such report is required for the purpose of any assessment to be levied pursuant to

the provisions of Section 13 of this Article X, shall immediately be sent by registered mail a second notice in writing to file such report, and if such report be not filed within 15 days after the mailing of such second notice the registration of such delinquent registered investment banker is thereby automatically suspended; provided that a copy of this amended Section shall have been sent to such delinquent registered investment banker with such second notice. Any registered investment banker whose registration shall have been thus suspended shall be immediately notified in writing of the suspension of his registration; and his registration may be automatically reinstated after filing such report and after payment of any assessment levied against him based on such report; provided such payment shall be made within 15 days after notice of his indebtedness shall have been sent to him. If any delinquent registered investment banker shall fail to file his report after 15 days suspension or shall fail to pay his indebtedness within 15 days after notice of assessment levied based on such report, his registration shall be automatically cancelled.

Amend Article X of Amendment No. 2 of the Code of Fair Competition for Investment Bankers:

Add the following new Section to be numbered Section 16:

SECTION 16. Application for Renewal of Cancelled Registrations.—Any investment banker whose registration as a registered investment banker shall have been cancelled as provided in Section 14 or 15 of this Article X, may apply for a new registration as a registered investment banker by an application therefor made in the same manner and under the same conditions as are specified in this Article X with respect to an original application for such registration; provided, that in the event such cancellation shall have been made under the provisions of said Section 14, the application for new registration shall be preceded or accompanied by payment in full of the amount of the indebtedness for which the original registration of such applicant shall have been cancelled; and, provided, further that in the event such cancellation shall have been made under the provisions of said Section 15, the application for such new registration shall be preceded or accompanied by the report or reports as to which the applicant was delinquent, and thereupon there shall be levied against such applicant the same assessment or assessments based on said report or reports which would have been levied if said report or reports had been filed in accordance with the original notice thereof, and such new registration shall not be granted until such applicant shall pay in full the amount of said assessment or assessments. No investment banker who shall have assented to the Code shall be entitled to a new registration as provided in this Section unless he shall also first pay in full the amount of any unpaid assessment owing by him in his capacity as such Assentor.

Approved Code No. 141—Amendment No. 3.
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